

1 **BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS**

2 In the Matter of

Case No.16A-DO-16-0038-OST

3 **JOSHUA TAUBER, D.O.,**

4 Holder of Training Permit No. R2561
5 For the Practice of Osteopathic Medicine
6 In the State of Arizona.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

7 On February 25, 2017, this matter came before the Arizona Board of Osteopathic
8 Examiners ("Board") for consideration of the Administrative Law Judge (ALJ) Suzanne
9 Marwil's proposed Findings of Fact, Conclusions of Law and Recommended Order.
10 Joshua Tauber, D.O., ("Respondent") appeared before the Board; Assistant Attorney
11 General Mary D. Williams, represented the State. Assistant Attorney General John Tellier
12 with the Licensing Enforcement Section of the Attorney General's Office, was available to
13 provide independent legal advice to the Board.

14 The Board, having considered the ALJ's decision and the entire record in this
15 matter, hereby issues the following Findings of Fact, Conclusions of Law and Order.

16 **FINDINGS OF FACT**

17 1. On November 14, 2016, the Arizona Board of Osteopathic Examiners in Medicine
18 and Surgery ("Board") issued a Complaint Notice of Hearing setting the above-captioned
19 matter for hearing on December 19, 2016, at the Office of Administrative Hearings in
20 Phoenix, Arizona.

21 2. Through the Complaint and Notice of Hearing, the Board alleges that Joshua
22 Tauber, D.O., failed to comply with a December 14, 2015 Stipulated Confidential
23 Rehabilitation Agreement and a July 11, 2016 Interim Consent Agreement and Stipulated
24 Order for Practice Restriction ("Interim Order") which he entered into with the Board after
25 disclosing his substance abuse. The Board also alleged that Dr. Tauber committed acts
of unprofessional conduct stemming from his use of opiates.

1 3. Dr. Tauber conceded that he violated the above orders, indicated that he could not
2 afford the monitoring restrictions and conditions set by the Board on a resident's salary.
3 He denied committing acts of unprofessional conduct, contending that he voluntarily
4 removed himself from the residency program while still undergoing orientation and hence
5 never had any patient contact.

6 4. Hearing was conducted on December 19, 2016. Dr. Tauber appeared and testified
7 on his own behalf.

8 5. The facts were largely undisputed. On July 1, 2015, Dr. Tauber was issued Post-
9 Graduate Training Permit No. R2561 allowing him to practice as an osteopathic physician
10 in his psychiatric residency program at Maricopa Integrated Health Systems.

11 6. At the time he received this Training Permit, Dr. Tauber was struggling with an
12 addiction to prescription opiates stemming from a connective tissue disorder and
13 accompanying chronic pain. Dr. Tauber had hoped to wean himself off opiates prior to
14 beginning his residency, but was unable to do so.

15 7. After only a few days in the residency program, he self-reported his opiate
16 dependency to a professor he knew in medical school who, in turn, referred him to Dr.
17 Michel Sucher, an addiction specialist. Dr. Tauber indicated that he initially saw Dr.
18 Sucher as private patient and was unaware of his relationship with the Board or position
19 regarding monitoring physicians with substance abuse problems.

20 8. Dr. Tauber told Dr. Sucher that he had been misusing prescription drugs by
21 crushing, snorting and taking them intravenously to increase their potency. Dr. Tauber
22 admitted that the situation had deteriorated to the point that his longtime girlfriend had
23 taken to waking up at night to check if he was still alive.

24 9. On July 13, 2015, Dr. Sucher concluded that Respondent had a severe substance
25 abuse disorder and was not safe to practice as a resident or in any type of medical
practice setting. Dr. Sucher recommended that Respondent complete a medical
detoxification program followed by a residential substance abuse treatment program for

1 30 to 90 days at a treatment facility that is accustomed to working with health
2 professionals.

3 10. Respondent expressed his desire to use methadone maintenance and Dr. Sucher
4 expressed his medical opinion that methadone would be an unacceptable course of
5 treatment for Respondent. Nevertheless, Dr. Tauber self-admitted to Sierra Tucson for
6 methadone detoxification. Dr. Tauber claimed that due to a clerical error he was
7 admitted to the pain management program but was moved to the substance abuse
8 program after both he and Dr. Sucher informed Sierra Tucson of the mistake.

9 11. On July 17, 2015, Respondent contacted the Board staff to report his abuse of
10 substances.

11 12. Pursuant to ARIZ. REV. STAT. § 32-1855, Respondent's residency supervisor and
12 another physician associated with Respondent's residency program reported to the
13 Board on July 20, 2015 that Respondent may be mentally or physically unable to safely
14 engage in the practice of medicine and given his admission that he had an addiction to
15 prescription drugs.

16 13. Pursuant to ARIZ. REV. STAT. § 32-1804(B)(19), on August 5, 2015, Sierra
17 Tucson facilitated Respondent signing an Interim Confidential Consent Agreement and
18 Stipulated Order for Practice Restriction ("Interim Agreement") in case no. D0-15-0159A.

19 14. Pursuant to the Interim Agreement, Respondent was prohibited from practicing
20 osteopathic medicine until he successfully completed (1) an inpatient evaluation and (2)
21 an inpatient treatment program as recommended by the inpatient evaluation, at a facility
22 approved by the Executive Director. Furthermore, Respondent was not allowed to return
23 to practice until such time there was finding by the Board's Executive Director that he was
24 safe to return to practice.

25 15. Respondent was eventually discharged from Sierra Tucson as a result of
numerous rule violations, including an inappropriate relationship with another patient and
a substance abuse relapse. Respondent acknowledged the rules infractions and

1 indicated that it was recommended he transfer to a program designed to treat physicians,
2 which he did on or about September 2, 2015.

3 16. Respondent successfully completed the treatment program at Promises in
4 California on November 19, 2015. Respondent was deemed fit to return to duty as a
5 psychiatry resident conditional on Respondent following certain recommendations
6 including, but not limited to, entering into a strict monitoring agreement with the Board
7 that included specific terms and conditions and carrying out the provisions of the
8 Transition Plan developed by Respondent and the team at Promises. These
9 recommendations specifically included using intravenous Vivatrol, an opiate blocker.

10 17. On December 14, 2015, Respondent and the Board entered into a Stipulated
11 Confidential Rehabilitation Agreement ("SRA") in case no. D0-15-0159A in which he
12 agreed to enroll in the Board's monitored aftercare program with Dr. Sucher for a
13 minimum period of 5 years. The monitored aftercare program included participation in a
14 relapse prevention group and a 12 step or self-help group, psychological and psychiatric
15 treatment, medication preapproval by a primary care physician, abstinence from alcohol
16 and random biological fluid/hair/nail testing.

17 18. The SRA also provided that any violation of the Agreement constituted
18 unprofessional conduct and would be grounds for further disciplinary action. Additionally,
19 in the event of a chemical dependency relapse by Respondent, the SRA required
20 Respondent to enter into an interim order for a practice restriction.

21 19. Dr. Sucher subsequently informed the Board that Respondent had a
22 compromised urine drug screen test in January of 2016, and that he was not attending
23 meetings as required by the terms of the SRA.

24 20. On March 1, 2016, Respondent emailed the Board's Executive Director to notify
25 her of a "recent change" to his substance abuse treatment plan, namely that he enrolled
in a methadone treatment clinic under the care of a physician. Respondent
acknowledged that he did not seek Board approval before making this change. Rather,
he unilaterally chose this course of action after nearly dying from an overdose of a drug

1 he ordered on the internet. He indicated that the cravings associated with drug
2 abstinence were too much for him and he decided to go on methadone for his health,
3 regardless of any repercussions from the Board because he was not currently practicing
4 medicine.

5 21. Respondent did not inform the Board of his drug overdose, but was instead
6 contacted by Dr. Sucher to inquire as to what transpired to cause Respondent to go on
7 methadone. Respondent told Dr. Sucher that he was first seen at the methadone clinic
8 on February 19, 2016, after he experienced a significant relapse and opiate overdose in
February of 2016.

9 22. Respondent noted that since his treatment with methadone began, he has been
10 monitored and subject to drug screens by the methadone clinic.

11 23. After learning of the drug overdose and relapse, which triggered Respondent's
12 previous agreement to enter into an Interim Agreement for Practice Restriction along with
13 additional inpatient residential treatment, Board staff immediately began attempts to
14 contact Respondent. The Board's efforts to do so were impeded by the fact that
Respondent moved and failed to provide the Board with an updated address.

15 24. On June 14, 2016, while still in the process of securing Respondent's signature on
16 an Interim Agreement for Practice Restriction, the Board received written notification from
17 Dr. Sucher that Respondent was noncompliant with the terms of his aftercare monitoring
18 program agreement as required by the SRA.

19 25. Respondent's Post-Graduate Training Permit expired June 30, 2016, and he did
20 not submit a renewal application to the Board. Dr. Tauber's license was set to expire on
21 June 30, 2016, but by operation of law, is now on suspended status. See ARIZ. REV.
22 STAT. § 33-3202. On March 16, 2016, the Board opened case no. D0-16-0038A against
23 Respondent based on his noncompliance with the SRA. The Board scheduled an
24 investigative hearing in case no. D0-16-0038A for July 30, 2016. Because Respondent
25 did not appear at the investigative hearing, the Board voted to refer the matter to a formal

1 administrative hearing if Respondent did not voluntarily surrender his Post-Graduate
2 Training Permit.

3 26. On July 11, 2016, after Respondent was put on the agenda for the Board Meeting,
4 Respondent signed the Interim Consent Agreement and Interim Order for Practice
5 Restriction, requiring an in-patient evaluation, which he has not done. Dr. Tauber
6 indicated that he waited to sign the Agreement until July because he did not want to go
7 off methadone which he believed was positive for his health. Dr. Tauber acknowledged
8 that he had not been participating with the Board's monitoring program since restarting
9 on methadone. He noted that he was being monitored by the methadone clinic and had
sought out-patient substance abuse treatment with Valley Hope in Tempe, Arizona.

10 27. Dr. Tauber stated that he discussed his methadone use with Dr. Sucher after the
11 fact and that Dr. Sucher said he would support Respondent practicing medicine while on
12 methadone if he underwent neurocognitive testing and was fully compliant with
13 monitoring. Dr. Sucher acknowledged this conversation but said he never discussed the
14 matter with the Board because Respondent failed to undergo the requisite testing and
was noncompliant with monitoring.

15 28. Dr. Tauber argued at hearing that revoking his Post-Graduate Training Permit
16 would be too harsh a penalty because such a revocation would preclude him from
17 applying to practice osteopathic medicine in Arizona for five years. He emphasized that
18 he had not seen any patients and had voluntarily sought treatment. He expressed a
19 willingness to work with the Board and accept a shorter time period of preclusion from
practicing osteopathic medicine.

20 29. The Board requested that Dr. Tauber's Post-Graduate Training Permit be
21 revoked. It was the Board's position that it had worked with Dr. Tauber to assist him on
22 managing his substance abuse issues, but he had proven himself to be unregulatable by
23 going his own way and refusing to comply with Board Orders and the requisite monitoring
24 and follow-up. The Board believed that Dr. Tauber therefore posed a risk to any potential
25 patient and is unsafe to practice medicine in any capacity.

CONCLUSIONS OF LAW

1. The Board bears the burden of persuasion. ARIZ. REV. STAT. § 41-1092.07(G)(2).

2. The standard of proof on all issues in this matter is that of a preponderance of the evidence. ARIZ. ADMIN. CODE R2-19-119.

3. A preponderance of the evidence is:

The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

4. The Board had authority to conduct an investigative hearing regarding Dr. Tauber's ability or fitness to practice safely. ARIZ. REV. STAT. §§ 32-1855(A) and (E).

5. It is unprofessional conduct for a licensee to violate a formal order of the Board. ARIZ. REV. STAT. § 32-1854(25). Respondent admitted that he has repeatedly violated Board orders and even entered into agreements with the Board knowing that he had no intention of complying with their terms. This sort of behavior lends credence to the Board's belief that Respondent is unwilling to be regulated.

6. As to the rest of the charged violations, Respondent disputes that he has ever practiced medicine, noting that he voluntarily withdrew himself from his residency program during orientation and before having any patient conduct.

7. The Tribunal finds this argument unpersuasive as the Post-Graduate Training Permit clearly afforded Respondent the right to practice medicine and while in possession of this legal right to practice medicine, he engaged in dangerous acts including, but not limited to the abuse of both prescription drugs and drugs obtained through the internet. This sort of admitted conduct of crushing, snorting and overdosing on drugs clearly constitutes unprofessional conduct pursuant to numerous Arizona statutory subsections. See ARIZ. REV. STAT. § 32-1854(3) ("[p]racticing medicine while under the influence of

1 alcohol, a dangerous drug as defined in section 13-3401, narcotic or hypnotic drugs or
2 any substance that impairs or may impair the licensee's ability to safely and skillfully
3 practice medicine"); ARIZ. REV. STAT. § 32-1854(6) ("[e]ngaging in the practice of
4 medicine in a manner that harms or may harm a patient or that the board determines falls
5 below the community standard"); ARIZ. REV. STAT. § 32-1854(20) ("[v]iolating or
6 attempting to violate, directly or indirectly, or assisting in or abetting the violation of or
7 conspiring to violate any of the provisions of this chapter"); and ARIZ. REV. STAT. § 32-
8 1854(22) ("[u]sing controlled substances or prescription-only drugs unless they are
9 provided by a medical practitioner, as defined in section 32-1901, as part of a lawful
course of treatment").

10 8. The fact that Dr. Tauber did not actually treat patients does not mean that he did
11 not have the ability to do so and as such, this unprofessional conduct posed a danger to
the public.

12 9. Under these facts and circumstances, the Board had met its burden to show that
13 Dr. Tauber committed unprofessional conduct by failing to comply Board Orders,
14 misusing both prescription and other drugs he ordered off the internet. Dr. Tauber
15 candidly admits that he is not in a position to practice medicine until he obtains control
16 over his addiction. He simply requests that the Board afford him the right to reapply to
17 practice medicine sooner than the five years after the revocation of his Post-Graduate
Training Certificate.

18 10. This record contains no evidence that Dr. Tauber is currently fit to practice
19 medicine nor does it suggest a timeline by which his fitness to do so will occur. The
20 Board has authority to revoke Dr. Tauber's Post-Graduate Training Permit. ARIZ. REV.
21 STAT. § 32-1855(H).

22 ORDER

23 **IT IS ORDERED** that Josh Tauber, D.O.'s Post-Graduate Training Permit number
24 R2561 is revoked.
25

1 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

2 Respondent is hereby notified that he has the right to petition for a rehearing or
3 review. The petition for rehearing or review must be filed with the Board's Executive
4 Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The
5 petition for rehearing or review must set forth legally sufficient reasons for granting a
6 rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days
7 after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not
8 filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to
9 Respondent.

10 Respondent is further notified that the filing of a motion for rehearing or review is
11 required to preserve any rights of appeal to the Superior Court.

12 DATED this 2nd day of March 2017.

13 THE ARIZONA BOARD OF OSTEOPATHIC
14 EXAMINERS



16 By Jenna Jones
17 Jenna Jones
18 Executive Director

19 ORIGINAL of the foregoing filed this
20 2nd day of March, 2017 with:

21 Arizona Board of Osteopathic Examiners
22 9535 East Doubletree Ranch Road
23 Scottsdale, Arizona 85258

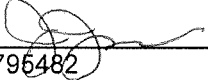
24 COPY of the foregoing filed this
25 2nd day of March, 2017 with:

 Greg Hanchett, Director
 Office of Administrative Hearings
 1400 W. Washington, Ste 101
 Phoenix, AZ 85007

1 Executed copy of the foregoing
2 mailed by U.S. Mail this
2nd day of March, 2017 to:

3 Joshua Tauber, D.O.
4 Address of Record

5
6 Mary D. Williams
7 Assistant Attorney General
8 Office of the Attorney General
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1275 W. Washington
Phoenix, AZ 85007

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11  _____
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